

ORIGINAL

OPEN MEETING ITEM

5/14/09

COMMISSIONERS  
KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR



0000096452

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ARIZONA CORPORATION COMMISSION

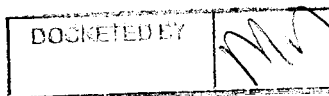
TO: Kristin K. Mayes, Chairman  
Gary Pierce  
Paul Newman  
Sandra D. Kennedy  
Bob Stump

Arizona Corporation Commission

DOCKETED

FROM: Matthew J. Neubert *[Signature]*  
Director of Securities

MAY - 1 2009



DATE: April 28, 2009

RE: Proposed Default Order Regarding Knuckleball Capital Management, LLC,  
Docket No. S-20649A-09-0013

CC: Michael P. Kearns, Interim Executive Director

RECEIVED  
2009 MAY - 1 A 9:54  
AZ CORP COMMISSION  
DOCKET CONTROL

Please find attached a proposed default Order to Cease and Desist, For Restitution and For Administrative Penalty ("Order") against Respondent Knuckleball Capital Management, LLC ("Knuckleball"). Respondent Knuckleball has not appeared in or defended this matter within the required time limits. Respondents Jeffrie Harper and Donald Robert Mattson are not a part of this Order.

The Order contains findings that from April 2007 to February 2008 Knuckleball and others sold to investors residing in Arizona securities to raise funds for foreign exchange trading. All of the investor funds were deposited into an account in the name of Knuckleball Capital Management, LLC. A portion of the funds were used to repay investors or withdrawn as cash.

The Order requires Respondent Knuckleball to pay restitution in the amount of \$179,000.00, and to pay an administrative penalty in the amount of \$50,000.00. The Order also contains findings that Respondent Knuckleball violated A.R.S. §§ 44-1841 and 44-1842 for selling unregistered securities while not being registered as a dealer or salesman, or exempt from registration, and the antifraud provision of the Securities Act, A.R.S. § 44-1991.

The Division recommends this Order is appropriate, in the public interest, and necessary for the protection of investors.

Originator: Aikaterine Vervilos

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

In the matter of:	)	DOCKET NO. S-20649A-09-0013
	)	
JEFFRIE HARPER (CRD #2863910)(a/k/a	)	
Jeff Harper) and KATHLEEN JANICE	)	DECISION NO. _____
HARPER, husband and wife	)	
	)	
DONALD ROBERT MATTSON JR (a/k/a	)	<b>ORDER TO CEASE AND DESIST, FOR</b>
Rob Mattson), an unmarried man	)	<b>RESTITUTION AND FOR</b>
	)	<b>ADMINISTRATIVE PENALTY RE:</b>
KNUCKLEBALL CAPITAL	)	<b>KNUCKLEBALL CAPITAL</b>
MANAGEMENT, LLC, an Arizona limited	)	<b>MANAGEMENT, LLC</b>
liability company	)	
	)	
Respondents.	)	
	)	
	)	

15 On January 15, 2009, the Securities Division ("Division") of the Arizona Corporation  
16 Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order  
17 to Cease and Desist, for Restitution, for Administrative Penalties and for other Affirmative Action  
18 ("Notice") in the matter against Respondents Jeffrie Harper (a/k/a Jeff Harper) ("Harper") and  
19 Kathleen Janice Harper, husband and wife, Donald Robert Mattson (a/k/a Rob Mattson) ("Mattson"),  
20 and Knuckleball Capital Management, LLC, an Arizona limited liability company ("Knuckleball").

21 Knuckleball Capital Management, LLC, was personally served on January 15, 2009. The  
22 Notice specified that Knuckleball had ten days to request a hearing and 30 days to file an answer.  
23 Knuckleball neither requested a hearing nor filed an answer within the required time.

24 Mattson was served on January 21, 2009. Mattson filed an answer on February 17, 2009.  
25 Harper and Kathleen Janice Harper were served on January 23, 2009. Harper and Kathleen Janice  
26

1 Harper filed an answer on February 18, 2009. Harper, Kathleen Janice Harper, and Mattson are not  
2 subject to this Order.

3 I.

4 FINDINGS OF FACT

5 1. Jeffrie Harper (CRD #2863910)(a/k/a Jeff Harper) ("Harper") is an individual who  
6 at all relevant times resided in Maricopa County, Arizona.

7 2. Donald Robert Mattson (a/k/a Rob Mattson) ("Mattson") is an individual who at all  
8 relevant times resided in Maricopa County, Arizona.

9 3. KNUCKLEBALL CAPITAL MANAGEMENT, LLC ("KNUCKLEBALL"), is an  
10 Arizona limited liability company organized on or about May 15, 2007. According to Commission  
11 records, Harper and Mattson are members of KNUCKLEBALL.

12 4. According to Commission records, KNUCKLEBALL's primary purpose is currency  
13 investing.

14 5. Harper, Mattson, and KNUCKLEBALL may be collectively referred to as  
15 "Respondents."

16 6. Beginning in or around April 2007 until in or around February 2008, Respondents  
17 offered and sold securities in the form of investment contracts and/or commodity investment  
18 contracts ("Investment(s)"). Respondents sold at least \$179,000 of the Investments to at least six  
19 Arizona investors who at all relevant times resided in Arizona.

20 7. Respondents represented to the investors that the funds would be used to trade in the  
21 foreign currency exchange market. Respondents represented to at least one investor that the  
22 Respondents would be trading in the Euro/dollar market.

23 8. Respondents directed the investors to make their investment monies payable to  
24 KNUCKLEBALL. KNUCKLEBALL received the investor funds and pooled the funds in a bank  
25 account opened by Mattson and controlled by Mattson and Harper.

1           9.     The Respondents told investors different things as to who would conduct the  
2 trading. At least one investor was told Mattson would conduct the trading. In another instance,  
3 Harper told at least one investor that a "friend" would do the trading. Upon information and belief,  
4 the "friend" is Mattson.

5           10.    The Respondents promised positive returns to the investors solely from the efforts  
6 of the Respondents. At least one investor was promised returns of three percent a month.  
7 However, none of the returns materialized.

8           11.    The Respondents represented to the investors that their investor funds would be  
9 used for the Investments. None of the investors gave the Respondents authorization to use the  
10 investor funds for any purpose other than investing in the Investments.

11          12.    ~~The Respondents failed to tell investors they used the investor funds to repay other~~  
12 investors and withdraw the funds from the KNUCKLEBALL bank account in cash. In another  
13 instance, the Respondents failed to tell investors they transferred investor funds to an offshore bank  
14 account.

15          13.    Respondents represented to investors different levels of risk regarding the  
16 Investments. In at least one instance, an investor was told that the Investment was risky but  
17 lucrative. In another instance, an investor was not told about any risks to the Investment, including  
18 but not limited to, the possibility that the investor may lose all or a large portion of the investment.  
19 In yet another instance, an investor was told that the Investment was a good, safe investment where  
20 the investor could not lose any money.

21          14.    The Respondents failed to disclose any risks because a majority of investors who  
22 invested with the Respondents lost their entire investment.

23          15.    KNUCKLEBALL and Harper told at least one investor that the Investment was  
24 growing and doing well. This investor made a second Investment based on these statements.  
25 However, the Respondents failed to tell the investor that at the time of the investment the funds  
26 were being used for purposes other than the Investment.

1       16. Respondents failed to disclose that Harper filed for bankruptcy and voluntary  
2 resigned from his position as a registered salesman, which misled investors to believe the  
3 Investments were risk-free and would generate positive returns, to wit:

4           a. that on or about December 23, 2004, Harper and Kathleen Janice Harper filed for  
5 protection under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy Court,  
6 District of Arizona in the matter entitled *In re Harper*, case no. 2:04-bk-22104-GBN. On May 20,  
7 2005, Harper and Kathleen Janice Harper received a bankruptcy discharge.

8           b. that Harper was a registered salesman who resigned his position during an  
9 internal investigation for alleged misconduct. Harper was a registered salesman with World Group  
10 Securities, Inc. ("WGS") from April 12, 2002 until August 27, 2004. WGS reported on the Central  
11 Registration Depository ("CRD") of the Financial Industry Regulatory Authority, Inc. ("FINRA")  
12 that Harper "was permitted to resign while under internal review for failure to repay debts owed to  
13 customer of the firm, possible sharing of commissions with a representative of another firm, and a  
14 possible unapproved outside business activity."

15       17. Some of the investors requested from Harper statements of their accounts. Harper  
16 did not provide any statements or accounting of the investment despite numerous requests, but  
17 assured at least one investor that the investment was doing well.

18       18. At least one investor contacted Harper consistently to find out how the investment  
19 was doing. Harper responded that the investment was fine and the monies were growing.  
20 However, Mattson contacted this investor and told him that Mattson lost \$50,000 in currency  
21 trading and that another \$50,000 was never received from the investor. Harper later told this same  
22 investor that he used some of the funds to pay medical bills.

23       19. Another investor contacted Harper regarding the status of the investment. Harper  
24 told this investor that the money was gone and that Mattson invested the funds in areas not  
25 intended for the funds.

26

20. At all times relevant, Respondents were not registered with the Commission as dealers or salesmen.

21. At all times relevant, the Investments were not registered with the Commission.

## II.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. KNUCKLEBALL offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. ~~3. KNUCKLEBALL~~ violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. KNUCKLEBALL violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer nor exempt from registration.

5. KNUCKLEBALL violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit. The conduct included:

a) Provided information regarding potential positive returns to at least one investor, but failed disclose to at least one investor the risks associated with their investment including, but not limited to, the possibility that he/she may lose all or a large portion of their investment;

b) Failed to tell at least one investor that on or about December 23, 2004, Harper and Kathleen Janice Harper filed for protection under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy Court, District of Arizona in the matter entitled In re Harper, case no. 2:04-bk-22104-GBN. On May 20, 2005, Harper and Kathleen Janice

1 Harper received a bankruptcy discharge. This failure misled investors to believe that the  
2 Investment was risk-free and would generate positive returns;

3 c) Failed to tell at least one investor that Harper was a registered salesman who  
4 resigned his position during an internal investigation for alleged misconduct. Harper was a  
5 registered salesman with World Group Securities, Inc. ("WGS") from April 12, 2002 until  
6 August 27, 2004. WGI reported on the Central Registration Depository ("CRD") of the  
7 Financial Industry Regulatory Authority, Inc. ("FINRA") that Harper resigned for  
8 borrowing money from a WGI customer and did not pay it back, possibly referred business  
9 to another firm and shared commissions with a representative from that firm, and possibly  
10 participated in an unauthorized outside business activity. This failure misled investors to  
11 believe that the Investment was risk-free and would generate positive returns;

12 d) Misrepresented to at least one investor that the investor would receive  
13 returns of three percent per month when no returns materialized;

14 e) Misrepresented to investors that the funds they invested would be used in  
15 their entirety for the Investments when KNUCKLEBALL used investor funds to repay  
16 other investors, withdraw the funds as cash and/or transfer the funds to an offshore bank  
17 account;

18 f) Misrepresented to at least one investor that the Investment was growing and  
19 doing well when the funds were used to repay other investors, withdraw the funds as cash  
20 and/or transfer the funds to an offshore bank account; and

21 g) Misrepresented to at least one investor that the Investment was a good, safe  
22 investment where the investor could not lose any money when the funds were used to repay  
23 other investors, withdraw the funds as cash and/or transfer the funds to an offshore bank  
24 account.

25 6. KNUCKLEBALL's conduct is grounds for a cease and desist order pursuant to  
26 A.R.S. § 44-2032.

8. KNUCKLEBALL's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

## ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that KNUCKLEBALL, and any of KNUCKLEBALL's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 that KNUCKLEBALL, individually, shall, jointly and severally with any other Respondent against whom the Commission enters an order under Docket No. S-20649A-09-0013, pay restitution to the Commission in the amount of \$179,000.00. Payment shall be made in full 60 days from the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of the distribution, shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the



1 Commission. Any funds that the Commission determines it is unable to or cannot feasibly  
2 disburse shall be transferred to the general fund of the state of Arizona.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that KNUCKLEBALL,  
4 individually, shall pay an administrative penalty in the amount of \$50,000.00. Payment shall be  
5 made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10%  
6 per annum from the date of this Order until paid in full. The payment obligations for these  
7 administrative penalties shall be subordinate to any restitution obligations ordered herein and shall  
8 become immediately due and payable only after restitution payments have been paid in full or  
9 upon KNUCKLEBALL's default with respect to KNUCKLEBALL's restitution obligations.

10 If KNUCKLEBALL fails to make any payment as required in the Order, any outstanding  
11 balance shall be in default and shall be immediately due and payable without notice or demand.  
12 KNUCKLEBALL agrees and understands that acceptance of any partial or late payment by the  
13 Commission is not a waiver of default by Commission.

14 For purposes of this Order, a bankruptcy filing by KNUCKLEBALL shall be an act of  
15 default. If KNUCKLEBALL does not comply with this Order, any outstanding balance may be  
16 deemed in default and shall be immediately due and payable.

17 ...

18 ...

19 ...

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21 ...

22 ...

23 ...

24 ...

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26 ...

1 IT IS FURTHER ORDERED, that if KNUCKLEBALL fails to comply with this order, the  
2 Commission may bring further legal proceedings against KNUCKLEBALL, including application  
3 to the superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION  
6  
7

8 CHAIRMAN

COMMISSIONER

10 COMMISSIONER

COMMISSIONER

COMMISSIONER

12 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,  
13 Interim Executive Director of the Arizona Corporation  
14 Commission, have hereunto set my hand and caused the  
15 official seal of the Commission to be affixed at the  
16 Capitol, in the City of Phoenix, this \_\_\_\_\_ day of  
17 \_\_\_\_\_, 2009.

18 MICHAEL P. KEARNS  
19 INTERIM EXECUTIVE DIRECTOR

20 DISSENT

22 DISSENT

24 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA  
25 Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

26 (AV)